



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: JUNE 22, 2022

IN THE MATTER OF:

Appeal Board No. 621439

PRESENT: MICHAEL T. GREASON, MEMBER

In Appeal Board Nos. 621437, 621438, 621439, the Commissioner of Labor appeals from the decisions of the Administrative Law Judge filed February 04, 2022, which overruled the initial determinations holding the claimant ineligible to receive benefits, effective February 22 through September 5, 2021, because she was not available for employment; charging the claimant with an overpayment of \$8,100 in Federal Pandemic Unemployment Compensation (FPUC benefits) repayable pursuant to § 2104 (f) (2) of the Coronavirus Aid, Relief, and Economic

Security (CARES) Act of 2020; charging the claimant with an overpayment of \$4,914 in regular unemployment insurance (UI benefits) recoverable pursuant to Labor Law § 597 (4); and reducing the claimant's right to receive future

benefits by 80 effective days and charging a monetary penalty of \$1,952.10 on the basis that the claimant made willful misrepresentations to obtain benefits.

In Appeal Board Nos. 621440 & 621441, an appeal was processed from the decisions of the Administrative Law Judge filed February 04, 2022, which acknowledged the Department of Labor's withdrawal of the initial determinations holding the claimant ineligible to receive Pandemic Unemployment Assistance (PUA benefits) effective February 22, 2021; charging the claimant with an overpayment of \$8,100 in FPUC benefits repayable pursuant to § 2104 (f) (2) of the Coronavirus Aid, Relief, and Economic Security

(CARES) Act of 2020; and charging the claimant with an overpayment of \$4,914 in PUA benefits recoverable pursuant to Section 2102 (h) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 and 20 CFR Section

625.14 (a).

At the combined a telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There was an appearance by the claimant.

In Appeal Board Nos. 621440 & 621441, the appeal was processed through inadvertence since the claimant made no actual request for an appeal from the Judge's decisions that processed the Department of Labor's withdrawal of the relevant initial determinations. Accordingly, the appeals in the foregoing cases should be dismissed.

Based on the record and testimony in this case, the Board makes the following

**FINDINGS OF FACT:** The claimant performed administrative work in-person three days per week for the instant employer until she went on maternity leave. She was scheduled to return to work February 22, 2021. Rather than return as planned, she decided to quit her job to care for her 2 children (4-month-old and 5-year-old daughter). The claimant wanted to be available to assist her 5-year-old while she attended school remotely from home. The claimant's mother, who could be available to assist the 5-year-old, was only available 1 day a week.

The claimant filed a claim for benefits that was made effective February 22, 2021. She wanted work 3 days per week with 2 of 3 days via remote and 1 of 3 days in person. For the weeks ending February 28 through September 5, 2021, the claimant certified weekly to zero days when she was not ready, willing, and able to work because she believed she could be available to perform administrative and customer service tasks on 2 evenings per week remotely and 1 evening a week in-person at the office. Based on these certifications, she received the benefits at issue.

**OPINION:** The credible evidence establishes that the claimant was not available for work because she was caring for her two young children. Pursuant to Labor Law § 591 (2), a claimant must be ready, willing, and able to work in the

claimant's usual employment or in any other for which the claimant is reasonably fitted by training and experience. Here, the claimant admittedly took a maternity leave of absence from her employment to care for her newborn and 5-year-old at home. Also, at the time the claimant was scheduled to return

to work on February 22, 2021, she left her employment to care for her children, especially to be available for her 5-year-old daughter while she attended school remotely from home. Although the claimant contends that she had her mother-in-law was available for childcare, the claimant also contends that she did not want to use her mother-in-law as a caregiver due to a language barrier that might impede assisting the 5-year-old with remote learning. See *Matter of Peek*, 133 AD3d 965 (3d Dept. 2015). Also, although the claimant contends that she is available for remote work after her 5-year-old finished remote learning, there is no evidence that claimant had a history of remote work or work during such evening hours. See Appeal Board No. 548487. Accordingly, the Board concludes that the claimant was ineligible for benefits because she was unavailable for work from February 22 through September 5, 2021.

The credible evidence further establishes that the claimant received the benefits at issue during the period of ineligibility that constitute an overpayment of respective benefits. Regarding the overpayment of \$8,100 in FPUC benefits, such benefits are recoverable pursuant to federal law.

The credible evidence further establishes that the claimant, from February 22 through September 5, 2021, stayed home and sought work three days a week, like her past employment, but with 2 days remote and 1 day in-office. The record fails to establish that the claimant was on notice that her work search efforts would not satisfy the legal requirements to be ready, willing, and able to work. Since a layperson is not required to be able to make legal conclusions when certifying for benefits, there is no record to establish that claimant knew that her weekly certifications of availability for work were incorrect under the unemployment insurance law. Under these circumstances, the claimant's certifications that she was ready, willing, and able to work in her usual employment or any other for which she was reasonably fitted by training and experience do not constitute factually false statements, let alone willful misrepresentations to obtain benefits under the

unemployment insurance law. See *Matter of Valvo*, 57 NY2d 116, 126 (1982). Accordingly, the Board finds and concludes that the overpayment of UI benefits is non-recoverable, and that the claimant is not subject to forfeiture or civil monetary penalties based on these certifications.

**DECISION:** In Appeal Board No. 621437, the decisions of the Administrative Law Judge, is reversed.

In Appeal Board No. 621438, the decisions of the Administrative Law Judge, is modified accordingly.

In Appeal Board No. 621439, the decision of the Administrative Law Judge, is affirmed.

In Appeal Board Nos. 621440 & 621441, the appeals are dismissed.

In Appeal Board No. 621437, the initial determination, holding the claimant ineligible to receive benefits, effective February 22 through September 5, 2021, on the basis that the claimant was not available for employment, is sustained.

In Appeal Board No. 621438, the initial determination, charging the claimant with an overpayment of \$8,100 in FPUC benefits repayable pursuant to § 2104

(f) (2) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, is sustained.

In Appeal Board No. 621438, the initial determination, charging the claimant with an overpayment of \$4,914 in UI benefits recoverable pursuant to Labor Law § 597 (4), is modified to be a non-recoverable overpayment, and as so

modified, is sustained.

In Appeal Board No. 621439, the initial determinations, reducing the claimant's right to receive future benefits by 80 effective days and charging a monetary penalty of \$1,952.10 on the basis that the claimant made willful misrepresentations to obtain benefits, are overruled.

The claimant is denied benefits with respect to the issues decided herein.

MICHAEL T. GREASON, MEMBER

Federal law provides that New York State can waive repayment of Pandemic Emergency Unemployment Compensation (PEUC), Federal Pandemic Unemployment Compensation (FPUC), Lost Wages Assistance (LWA), Mixed Earners Unemployment Compensation (MEUC) or Pandemic Unemployment Assistance (PUA) benefits overpaid to the claimant if the overpayment was not the claimant's fault and

repayment would be contrary to equity and good conscience. For more information on the overpayment waiver process and instructions to request a waiver, please visit the New York State Department of Labor's website, <https://dol.ny.gov/overpayment-waiver-and-appeal-process>.